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6 **UNITED STATES DISTRICT COURT**  
7 **SOUTHERN DISTRICT OF CALIFORNIA**  
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9 TAMMIE LAMPHERE, Personal  
10 Representative of the ESTATE OF  
11 KRISTOPHOR JOHN LAMPHERE,  
12 deceased, TAMMIE LAMPHERE,  
13 individually, MARISSA CHACON,  
14 individually, by and through her mother,  
15 TAMMIE LAMPHERE, BRIANA  
16 CHACON, individually, by and through  
17 her mother, TAMMIE LAMPHERE,  
18 LINDA KOLM, Personal Representative  
19 of the ESTATE OF KARL KOLB,  
20 deceased, LINDA KOLB, individually,  
21 BRETT KOLB, individually, DONALD L.  
22 WOMBLE, SR., Personal Representative  
23 of the ESTATE OF DONALD L.  
24 WOMBLE, JR., deceased, DONALD L.  
25 WOMBLE, SR., individually, JEANNE  
26 WOMBLE, individually, KRISTIN  
27 WOOMBLE, individually, by and through  
28 her mother, STACEY L. GARDNER,  
AMBER WOMBLE, individually,  
DONALD L. WOMBLE, III, by and  
through his mother, STACEY L.  
GARDNER,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. 06CV2174-LAB (JMA)

**ORDER RE CHOICE OF LAW  
FOR DAMAGES  
DETERMINATION**

[Dkt No. 21]

26 This consolidated action arises out of an October 24, 2004 airplane crash into a  
27 mountainside shortly after takeoff from Brown Field Municipal Airport in San Diego, California.  
28 There is no dispute the plane was owned and operated by Medflight, an Albuquerque, New

1 Mexico based air ambulance service. The flight had originated nine hours earlier from  
2 Albuquerque and was on the fourth leg of a trip that had included stops in El Paso, Texas and  
3 Manzanillo, Mexico. All five persons on board (the pilot, co-pilot, and three paramedics)  
4 were killed. Plaintiffs sue the United States of America under the Federal Tort Claims Act  
5 ("FTCA") alleging, among other things, errors on the part of the government's Air Traffic  
6 Control employees which they contend caused or contributed to the crash.

7 The matter is before the court on plaintiffs' Motion For Determination Of Appropriate  
8 Law Of Damages ("Motion"). They contend because all the victims were from either New  
9 Mexico or Texas, those states have a greater interest than California in the type of damages  
10 available to compensate their states' resident survivors. Under California law, the court  
11 performs an independent choice of law analysis with respect to damages issues and liability  
12 issues. See Browne v. McDonnell Douglas Corp., 504 F.Supp. 514, 517 (N.D. Cal. 1980),  
13 citing Beech Aircraft Corp. v. Superior Court, 61 Cal.App.3d 501 (1976). Plaintiffs  
14 demonstrate the proper result is that California law should apply for a determination of liability,  
15 but the damages law of New Mexico should apply to the claims made on behalf of those who  
16 lived and worked in New Mexico. The United States responded to the Motion and concurs  
17 the law of New Mexico should apply to damages issues where plaintiffs are residents of New  
18 Mexico and, accordingly, does not oppose their request for that determination.<sup>1</sup> Dkt No. 22.

19 The FTCA provides the liability of the United States must be determined "in  
20 accordance with the law of the place where the act or omission occurred." 28 U.S.C. §  
21 1346(b). California law, including its choice of law rules, thus applies. California has adopted  
22 a "government interest" approach to resolving choice of law questions. Reich v. Purcell, 67  
23 Cal.2d 551 (1967). The analysis proceeds through three steps. First, the court determines  
24 whether the substantive laws of the two jurisdictions differ on the issue presented. Waggoner  
25 v. Snow, Becker, Kroll, Klaris & Krauss, 991 F.2d 1501, 1506 (9th Cir. 1993); Ledesma v.  
26 Jack Stewart Produce, Inc., 816 F.2d 482, 484 (9th Cir. 1987). If not, the law of the forum

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28 <sup>1</sup> The Motion applies to the claims in the Lamphere action, but not to claims in the consolidated Read case, as the latter plaintiffs appear to reside in Texas.

1 applies. If the laws differ, in a second step the court determines whether a "true conflict"  
2 exists, *i.e.*, whether "both states have a legitimate interest in having their law apply."  
3 Waggoner, 991 F.2d at 1506; Liew v. Official Receiver and Liquidator, 685 F.2d 1192, 1196  
4 (9th Cir. 1982). When both states have a true "governmental" interest in seeing their law  
5 applied, the court performs a "comparative impairment" analysis in a third step to determine  
6 which jurisdiction's interests would be most impaired if its policies were subordinated to those  
7 of the other jurisdiction. Liew, 685 F.2d at 1196; Waggoner, 991 F.2d at 1507.

8 As demonstrated in the parties' papers, the substantive laws of New Mexico and  
9 California differ on the measure of damages recoverable in wrongful death actions. At step  
10 two, the parties concur -- and this court finds -- no "true conflict" exists, however, because  
11 California has no interest in seeing its damages law apply to a case concerning non-  
12 residents, whereas New Mexico has a legitimate interest in seeing its residents compensated  
13 to avoid their dependency on state support or services. The analysis terminates in these  
14 circumstances at step two.

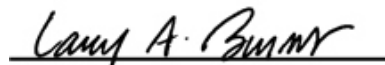
15 For all the foregoing reasons, **IT IS HEREBY ORDERED** the unopposed Motion is  
16 **GRANTED**. The measure of damages issues will be decided applying the law of New Mexico  
17 to the claims of the New Mexico resident plaintiffs. **IT IS FURTHER ORDERED** the Motion  
18 hearing presently scheduled for May 21, 2007 is **off-calendar**.

19 **IT IS SO ORDERED.**

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21 DATED: May 9, 2007

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HONORABLE LARRY ALAN Burns  
United States District Judge

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